

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5663 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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GUJ.RAJYA NAGRIK PURVATHA NIGAM PACHHAT VARG KARMACHARI MANDAL

Versus

STATE OF GUJARAT

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Appearance:

MR DM THAKKAR for Petitioners

MRS SIDDHI TALATI for Respondent No. 1

None present for Respondent No. 2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/10/97

C.A.V. JUDGEMENT

The petitioner, Gujarat Rajya Nagrik Purvatha Nigam Pachhat Varg Karmachari Mandal, through its President and the petitioner No.2 its General Secretary, filed this special civil application and prayer has been made for issuance of a writ of mandamus or writ in the nature of mandamus or any other appropriate writ, order or direction declaring that the action of the respondent

Corporation in not extending the benefit of "Double Salary" to the members of the petitioner Union though they have worked during the strike period i.e. from 7th June, 1985 to 17th August, 1985 a illegal, arbitrary and unconstitutional.

The facts of the case in brief are to be taken for the purpose of appreciating the controversy which has been raised in the present case by the petitioners.

That on a call given by the non-backward class employees' Associations of the State of Gujarat, all the non-backward class employees in the State went on strike with effect from 7th June, 1985. The State Government having come to know about the aforesaid call given by different Associations of non-backward class employees issued a Circular on 6th June, 1985 whereunder all the heads of the Government Departments were directed to appoint retired Government employees on temporary basis on the posts on which they had retired in order to see that the Government work is not disrupted due to the aforesaid call of the strike. In the very circular, further direction has been issued that those employees who remain present during the strike period should be paid average daily wages plus dearness allowance over and above their regular salary and those employees who join the strike pursuant to the aforesaid call should not be paid their salary during their absence from duty.

The members of the petitioner-association are the employees of the Gujarat State Civil Supplies Corporation and the non-backward class employees of the Corporation have also joined the strike, call for which has been given by different unions of Government employees etc.. The Corporation in pursuance of the circular of the Finance Department of the Government of Gujarat dated 14th June, 1985 issued a circular dated 20th June, 1985 directing all the District Managers of the Corporation that they are required to follow the instructions given by the Government vide its aforesaid circular. The circular of the Government aforesaid provides that those employees who have participated in the strike, their salary should not be accounted for and those employees who have not participated in the strike, their pay bill should be prepared separately. Another circular came to be issued by the Government dated 28th June, 1985 in continuance of its earlier circular dated 6th June, 1985 inter-alia directing that the double salary should be paid during the period of strike only to those employees whose respective associations/mandals have given a call for strike. This resolution further resolved that the

double salary during the said period shall be payable to all categories of Government staff upto and including the Deputy Secretaries to Government without the restrictions that their mandals/associations have given a call for strike. Clause (2) of the aforesaid circular postulates of the extension of that benefit to the Panchayat employees subject to the condition that the said payment shall be made only after preparing the supplementary bill for the employees who continue to be regular in attendance and first supplementary bill has to be of those employees who were on duty continuously from 1st June, 1985. The second supplementary bill was to be prepared only after the payment of double salary benefit to the beneficiaries of first supplementary bill.

The Board of Directors of the Corporation in its meeting held on 29th August, 1985 resolved that the entire period of strike in respect of employees of the Corporation should be treated in the manner that for 50% period of absence full pay may be given treating the period as special leave and for remaining period also pay may be released subject to the adjustment of the period of absence against the balance of earned leave or commuted medical leave on furnishing an undertaking by the concerned employee that he agrees to the said adjustment of the leave in balance and refund the amount not so adjusted and the period not so governed by the earned or commuted leave should be treated as extraordinary leave without pay. That strike continued till 17th August, 1985. During the period of the strike aforesaid, the petitioner contended that all the members of its association have performed their duties and therefore as per the aforesaid resolution/circular they are entitled for double salary benefit which has been available to all the employees who have not participated in the said strike but despite of those resolutions the benefits have not been extended and hence, this special civil application before this Court.

This petition has been contested by the respondent-Corporation. A detailed reply to the same has been filed. This special civil application is filed by the petitioners on 15th October, 1985 and reply to the same has been filed by the respondent No.2 on 28th December, 1985.

In reply, the respondent No.2 has come up with a case that it is a 'Company' incorporated under the provisions of Companies Act, 1956 and its management and control of the affairs vest in the Board of Directors. Being independent legal entity, the circulars issued by

the State Government in respect of its employees ipso facto would not be applicable to the employees of the Corporation unless it accepts and decides to adopt the same. The explanation given to the circular dated 14th June, 1985 is that it was not followed but necessary guidelines have been given to the District Managers not to draw the pay bills of the striking employees. It has further been stated that the circular dated 14th June, 1985 nowhere provides for payment of the double salary to the employees who worked during the strike period. Though there appears to be a typing mistake but reading as a whole the contents of the reply in para-3 gives out that the Corporation has justified its action not to give the benefit of double salary to its employees who have not gone on strike as it has not adopted the Government resolution dated 6th June, 1985. It has further been referred that the Board of Directors of the Corporation in its meeting held on 13-12-1985 has rejected the demand for double salary to the employees who had worked during the strike period, and as such, they are not entitled for the said claim. It has further been stated that by mistake some of the employees who were on deputation to Corporation and who had not participated in the strike have been paid double salary but that amount has to be recovered. The respondent No.2 has passed its resolution dated 29th August, 1985 whereunder in the line of the resolution of the Government a decision has been taken for payment of salary to the employees who have gone on strike.

The counsel for the petitioners has produced on record of this special civil application letter dated 24th February, 1986 of Food & Civil Supplies Department, Government of Gujarat, New Sachivalaya Complex, Gandhinagar addressed to the Managing Director of the Corporation under the caption, "Double payment to employees who attended their duties during strike period". With the consent of the counsel for the respondent No.1 this document is taken on record. The counsel for the respondent No.1 does not dispute this document. From the contents of this letter it comes out that the Corporation sought some guidance in the matter of double payment to its employees who attended their duties during the strike period and guidelines have been given how the double payment has to be made to the employees who attended their duties during the strike period.

None of the parties have produced on record any resolution of the Corporation accepting the guidelines as given to it by the Government under its aforesaid letter.

The learned counsel for the petitioners contended that the Corporation has made a hostile discrimination in the matter of double payment to employees who attended their duties during the strike period. The Corporation has acted arbitrarily in accepting the circular of the Government whereunder the directions were given for payment of salary to the striking employees for the period of strike but where the Government has decided to give double salary to the employees who have not gone on strike has not been accepted. This act of the Corporation is wholly arbitrary and unjustified. It has next been contended that the Corporation sought the guidance in the matter of double payment to its employees who have not gone on strike and when the Government has given the guidelines for double payment to that class of employees it should have been accepted and accordingly the payment should have been made.

The counsel for the respondent No.1, on the other hand, submitted that it is a matter in between the Corporation and the petitioners and it has not come in the picture in any manner. However, the counsel for the respondent No.1 submitted that the guidance has been sought by the Corporation on the subject of double payment to the employees who attended their duties during the strike period and necessary guidelines have been issued, but it is for the respondent No.2 to accept those guidelines and act thereupon for which the respondent No.1 cannot compel it.

I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

The letter of the Government dated 24th February, 1986 contains a specific recital that double payment to the employees who attended their duties during the strike period would be subject to there being no case pending in the Court on the issue of double pay. In view of the aforesaid recital in the said document the claim of the petitioners for double payment is wholly untenable. This letter will not give any benefit to the petitioners as the applicability thereof was subject to the condition that on the issue of double pay to the category of the aforesaid employees is not pending in the Court but the matter in respect of the aforesaid claim of the employees, the members of the petitioner-association, is pending in this Court. The claim of the petitioners for double payment of salary for the period of strike of the employees who have not gone on strike is based on the ground that those employees who went on strike have been

given the benefit of payment of salary during the strike period though subject to certain adjustments of leave etc.. The validity of the decision of the Government as well as of the Corporation of giving of the salary to the employees who have gone on strike for the strike period on certain condition is not in issue before this Court. Otherwise I have my own reservation where the decision aforesaid is a legal decision. The Government is not distributing charity. It is the people's money and all care should have been taken that it is not wasted. The Apex Court of this country has taken a consistent view that irrespective of the fact whether the strike is legal or illegal, the employees who have gone on strike i.e. those who absented themselves from duties shall not be entitled for the salary for the period of absence on the principle, 'no work no pay'. However, I do not consider it necessary to go on this question any more in this special civil application.

The claim of the petitioners for double payment is based on the Government resolution of 6th June, 1985. That Government resolution is ipso facto not binding on the Corporation. It may accept or may not accept the decision and the same analogy is applied to the contents of the letter dated 24th February, 1986. It is true that the Corporation sought the guidance from the Government under the subject, Double payment to the employees who have not gone on strike but still it is not binding. It is for the Corporation to resolve to accept it or not. In case the Corporation does not accept it, I fail to see how any legal or fundamental right of the petitioner is infringed. It is for the Corporation to decide to give the benefit of double pay to the employees who have not gone on strike but it is not a right much less an accrued right to the petitioners and that too of the character of enforceable and legal right. This Court sitting under Article 226 of the Constitution can only give the relief to the petitioners where they have a legal or fundamental right of double payment of salary on the ground that they have not gone on strike for the period of strike. The counsel for the petitioners is unable to point out any statutory provision or decision of the Corporation and in the absence of the same, this prayer of the petitioners for issuance of a writ of mandamus to the Corporation cannot be granted. The Corporation very specifically rejected the claim of the petitioners for the grant of double payment and I do not find any illegality in that decision also.

Referring to the resolution of the Government of 6th June, 1985 it is suffice to say that under that some

concessions are being extended in the form of incentives but merely because the Government has thought of giving of such concessions or incentives to its employees still it will not give a legally enforceable right to the petitioners. These are the only administrative decisions taken by the government. This is simply an administrative circular though financial implication is there. It is a settled law that the administrative circulars or the decisions of the Government does not give any enforceable right to the person concerned. It is an administrative policy decision and even in the case where it would not have been implemented by the Government for its own employees I have my own reservation in case this would have been brought to the Court this court would have declined to interfere. Reference in this respect may have to the decision of the Apex Court in the case of Union of India vs. S.L. Abbas reported in JT 1993 (3) SC 678.

The matter needs to be looked into from different angle. The petitioner No.1 is the Union which represents the backward class employees working in the Corporation. The petitioners have admitted in para-3 of the Special Civil Application that the call for the strike was given by the non-backward class employees' Associations of the State Government. It has further been admitted that only the non-backward class employees in the State went on strike w.e.f. 7th June, 1985. The counsel for the petitioners very fairly conceded that the call of the strike by the non-backward class employees' Associations was against the reservation policy in the services of the State Government. Naturally, this call has to be opposed by the backward class employees. It was a fight in between the category of employees to which the petitioner's members belong and non-backward class employees. The petitioner-association and its members were in fact interested to fail the strike, the call for which was given by the non-backward class employees' Associations. It was a anti-reservation drive in the form of strike and naturally the employees of the category of backward class were interested to see that the strike fails and one of the attempts in this part would have been to attend their duties and to see that all the employees of this category remain present on their duties. These employees, namely, the backward class employees have attended their duties not for the reason that they want to do the work of the Government but they have attended their duties with the object and purpose to see that this strike which is directly against their demand of reservation is defeated. So there are two class of employees, one of the category who have not

gone on strike during this period i.e. belonging to the backward class and another belonging to non-backward class. The employees of non-backward class who have not participated in the strike are really the persons who have worked for the State Government and mindful of their legal obligations towards the State as well as the people of the State. Though the strike was for the benefit of that class of persons but still they have attended their duties and this makes whole of the difference and distinguish in between these two class of employees. In the case of backward class employees to which the members of the petitioner-association belong, they have worked on the strike days as there was anti-reservation agitation by the non-backward class employees. In view of this fact, the payment of double pay to this class of persons otherwise also does not stand to any logic or justification.

At this stage I consider advantageous to refer to the Government resolution dated 28th June, 1985. The benefit of double salary was extended to those employees whose respective associations and mandals have given a call for strike. The intention of the Government of extending the benefit of double salary was to reward its loyal employees. Those loyal employees were the members of the associations and mandals which gave the call for strike i.e. the non-backward class employees. It is not the case of the petitioners and it could not have been also that the petitioner No.1 association has given any call for strike. So if we go by this resolution of the Government, the members of the petitioner-association are otherwise also not entitled for the benefit of double salary. The intention of the government is very very clear and the aforesaid benefits were being extended only to those employees who are the members of associations/mandals which gave a call for strike. Much elaboration is not required as the facts themselves speak. The petitioner No.1 Union is of the category of backward class employees and it could not have given the call for strike for anti-reservation. In the facts as aforesaid it cannot be said that the members of the petitioner-association were loyal to the Corporation and reply to this even by a man of ordinary prudence will certainly come in the negative.

In the result, this special civil application fails and the same is dismissed with costs. Rule discharged.

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